



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

Molly Joseph Ward  
Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO WHITE POST DAIRY, L.L.C. VPA Permit No. VPG1 Registration No. 100092**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and White Post Dairy, L.L.C., for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means the discharge of a pollutant.
5. "Dairy" means the White Post Dairy, L.L.C. facility located at 1724 Berrys Ferry Road in Clarke County, Virginia, where White Post Dairy, L.L.C. manages pollutants which are the subject of the Permit.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "O&M" means operations and maintenance.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" means VPA General Permit No. VPG1 which was issued under the State Water Control Law and the Regulation on November 16, 2004 and which expires on November 15, 2014. Hickory Green Dairy, L.L.C. applied for registration under the VPA General Permit and was issued Registration No. 100092 on November 16, 2004. This registration was transferred to White Post Dairy, L.L.C. on July 28, 2008.
10. "Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.
12. "Registration statement" means a registration statement for coverage under a VPA General Permit.
13. "Regulation" means Virginia Pollution Abatement General Permit Regulation for Animal Feeding Operations, 9 VAC 25-192-10, *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "VAC" means the Virginia Administrative Code.
17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VPA" means Virginia Pollution Abatement.
19. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
21. "White Post" means White Post Dairy, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. White Post is a "person" within the meaning of Va. Code § 62.1-44.3.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. White Post Dairy, L.L.C. owns and operates the Dairy located in Clarke County, Virginia.
2. The Dairy is subject to Virginia Pollution Abatement General Permit No. VPG1 for Animal Feeding Operations which allows White Post to manage pollutants created by the Dairy, in strict compliance with the terms and conditions of the Permit.
3. On March 10, 2014, in response to a citizen complaint reporting a manure spill, DEQ staff performed a site inspection and observed that the liquid dairy manure reception pit had overflowed. This discharge flowed into a catchment basin, overflowed the catchment basin berm, flowed down an unpaved farm road and across property owned by White Post. A small amount of this discharge flowed onto the adjacent landowner's pasture, which drains to an unnamed tributary of Long Branch. At the furthest point the spill travelled, the manure was no closer than 1500 feet from surface waters. The estimated amount of liquid manure released was about 5,000 gallons. The release, which was not reported to DEQ by White Post, occurred on March 2, 2014.
4. 9 VAC 25-192-70 and Part III.B.2 of the Permit requires that "All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:
  - a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.
  - b. The permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.
  - c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated."
5. 9 VAC 25-192-70.II.E.2 and Part II.E.2 of the Permit states that "The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information, specified in Part

II E 1 a through c, regarding each such discharge immediately, that is, as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.”

6. On March 13, 2014, NOV No. W2014-03-V-0001 was issued for the violations described in paragraphs C(3) through C(5), above.
7. On March 19, 2014, White Post representatives contacted DEQ staff by telephone in response to the NOV. The cause of the spill was attributed to the shutdown of the manure solids screw press, which led to high volumes in and overflow of the reception pit. White Post representatives stated that they suspected an intruder had shut down the press. White Post implemented procedures to prevent spills after a similar spill occurred on March 3, 2013. The procedures require that the dairy staff check the level of water in the reception pit for adequate capacity and turn on the solid separator equipment before releasing more cow traffic lane flush water to the reception pit. A prior Letter of Agreement between the Department and White Post required that a catchment basin be constructed to route all potential water overflows to the manure water lagoon. During the inspection of March 10, 2014, DEQ staff noted the pathway designed to direct overflows to the lagoon was overgrown with vegetation, not allowing the overflow to enter the manure storage lagoon. A properly maintained overflow pathway would have prevented this spill.
8. Based on the results of the March 10, 2014 inspection and the March 19, 2014 phone call, the Board concludes that White Post has violated 9 VAC 25-192-70 and Parts II.E.2 and III.B.2 of the Permit, as described in paragraphs C(3) through(C)5, above
9. In order for White Post to complete its return to compliance, DEQ staff and representatives of White Post have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders White Post, and White Post agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control

Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

White Post shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, White Post shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of White Post for good cause shown by White Post, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2014-03-V-0001 dated March 13, 2014. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, White Post admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. White Post consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. White Post declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by White Post to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.



7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. White Post shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. White Post shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. White Post shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and White Post. Nevertheless, White Post agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after White Post has completed all of the requirements of the Order;
  - b. White Post petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to White Post.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve White Post from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

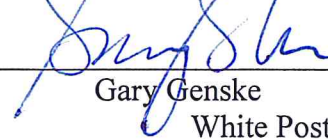
12. Any plans, reports, schedules or specifications attached hereto or submitted by White Post and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of White Post certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind White Post to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of White Post.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, White Post voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

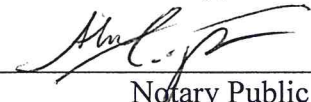
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White Post Dairy, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 9/29/14 By: , Member  
Gary Genske Title  
White Post Dairy, L.L.C.

State of California  
~~Commonwealth of Virginia~~  
City/County of Orange

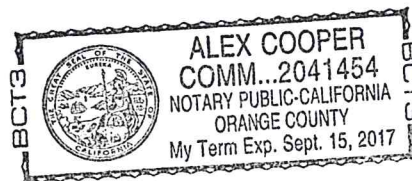
The foregoing document was signed and acknowledged before me this 29<sup>th</sup> day of September, 2014, by Gary B Genske who is a Member of White Post Dairy, L.L.C. on behalf of the company.

 Alex Cooper  
Notary Public

2041454  
Registration No.

My commission expires: 9-15-17

Notary seal:





## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Operational Procedure**

Within 30 days of the effective date of this Order, White Post shall provide training to operators requiring that they visually confirm that the solids separator is operating and check the level of the reception pit and ensure that sufficient freeboard exists to retain flushwater prior to initiating a flush. Within ten days of completion of training, but no later than 40 days after the effective date of this Order, submit documentation of training, including the date, time, topic covered and trainee list to DEQ.

### **2. Spill Prevention Controls**

- a. Within 60 days of the effective date of this Order, White Post shall submit to DEQ for approval a plan to install controls to prevent manure spills from the reception pit.
- b. Within 180 days of DEQ approval of the controls plan, White Post shall complete installation of controls at the Facility. Within 14 days after completion, White Post shall submit notification to DEQ that installation is complete.

### **3. DEQ Contact**

Unless otherwise specified in this Order, White Post shall submit all requirements of Appendix A of this Order to:

Karen Gail Hensley, P.E.  
Enforcement Specialist, Sr.  
VA DEQ –Valley Regional Office  
4411 Early Road  
P.O. Box 3000  
(540) 574-7821  
(540) 574-7878  
karen.hensley@deq.virginia.gov